

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

JUSTIN D. HURR)	
Claimant)	
)	
VS.)	Docket Nos. 1,020,759 and 1,020,761
)	
SHAWNEE COUNTY)	
Respondent)	
Self-Insured)	

ORDER

Respondent appealed the March 1, 2005, preliminary hearing Order entered by Administrative Law Judge Bryce D. Benedict.

ISSUES

The Administrative Law Judge (ALJ) determined that claimant suffered personal injury by accident arising out of and in the course of his employment on December 18, 2004. The ALJ awarded claimant preliminary benefits, including temporary total disability compensation and medical treatment. Respondent's contention that the claimant's injury and need for medical treatment resulted from an injury suffered while playing basketball on December 16, 2004, was rejected by the ALJ.

The evidence clearly shows the Claimant suffered at the least an aggravation of a preexisting condition on December 18, 2004.

The Respondent's contention that the Claimant suffered a significant injury while playing basketball is based upon rumor, speculation and innuendo.¹

The issues raised for the Board's review are (1) whether claimant suffered an accidental injury at work on December 18, 2004; and (2) whether claimant's current

¹ALJ Order (Mar. 1, 2005).

condition and need for medical treatment are directly attributable to the alleged December 18, 2004, accident.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

Having reviewed the whole evidentiary record filed herein, the Board makes the following findings of fact and conclusions of law:

The record in this case includes 12 depositions in addition to the preliminary hearing transcript, which contains the testimony of the claimant and 4 additional witnesses and the exhibits attached thereto.² The ALJ's Order bears two docketed claims. In Docket No. 1,020,759, claimant alleges that he injured his "lumbar spine, right hip, right leg, and right groin" on December 18, 2004, when he "[d]id 30 situps for CERT training aggravating prior injury."³ The prior injury that was allegedly aggravated occurred on October 29, 2004, when claimant was "[a]ttacked by an inmate and forced to restrain him," injuring his "lumbar spine, right hip, right leg and right groin."⁴ This previous work-related accident was assigned Docket No. 1,020,761. The compensability of the October 29, 2004, work-related back injury is not in dispute. Claimant was provided authorized medical treatment for that injury, although claimant contends that his release to return to work on November 15, 2004, was at his request and that he was to continue receiving physical therapy. However, he was not let off work to attend the physical therapy that was ordered by the authorized treating physician. After his release, claimant returned to work performing his regular job duties for respondent. Claimant testified, however, that his symptoms continued after he returned to work following the October 29, 2004, accident.

On December 18, 2004, claimant was performing a physical fitness test for the Corrections Emergency Response Team (CERT). This testing requires that the individual perform a series of agility and strength exercises within a certain time frame. After performing 73 push-ups within the allotted 2 minutes, claimant was performing sit-ups when he suffered further injury to his low back.

Respondent argues that claimant did not suffer personal injury by accident on December 18, 2004, as alleged, but that claimant's aggravation actually occurred 2 days earlier while he was playing basketball. Given his ongoing symptoms, it is certainly plausible that claimant aggravated his October 29, 2004, back injury while playing basketball on December 16, 2004. But it is unlikely that claimant's current condition is directly attributable to that basketball incident. On December 17, 2004, claimant worked

²K.S.A. 44-534a(a)(2) provides that a preliminary hearing "shall be summary in nature."

³Form K-WC E-1 Application for Hearing (filed Jan. 6, 2005).

⁴Form K-WC E-1 Application for Hearing (filed Jan. 6, 2005).

a double shift and was lifting weights for exercise. On December 18, 2004, claimant performed 73 push-ups immediately before reinjuring his back after doing 30 sit-ups. At that point, claimant's back symptoms were worse than he had ever experienced before. He did not feel able to complete his work shift for the first time since returning to work following his October 29, 2004, accident. Claimant's explanation for why he ultimately decided to finish his shift is plausible and convincing.

The ALJ obviously found claimant to be a credible witness. Having reviewed the entire record compiled to date, the Appeals Board agrees and affirms the ALJ's decision to award benefits.

WHEREFORE, it is the finding, decision and order of the Board that the March 1, 2005 Order entered by Administrative Law Judge Benedict should be and is hereby affirmed.

IT IS SO ORDERED.

Dated this _____ day of June 2005.

BOARD MEMBER

c: George H. Pearson, Attorney for Claimant
Larry G. Karns, Attorney for Respondent
Bryce D. Benedict, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director